

RESPONSE TO OFFICE ACTION MAILED 03/09/2006
"Campfire Safety Apparatus"
Serial No. 10/825,037
Examiner: Michael J. Early
Atty. Docket No. 040220.002
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REMARKS

A. The Finality of the Office Action is Premature

The second Office Action was made final and stated "Applicant's amendment
5 necessitated the new ground(s) of rejection presented in this Office action." Applicant
respectfully traverses this position.

The extent of the Applicant's amendment was limited to pulling up one of the limitations
found in an original dependent claim into the first independent claim. Specifically, the
amendment was limited to rewriting independent claim number 1 to include the language found
10 in dependent claim number 4.

As Applicant argued in the January 26, 2006 response, with respect to claims 4 and 5:

*(ii) The Present Rejection Ignores the Claim 4 Limitation that
"...the pin receivers on adjacent safety panels cooperate to receive a pin,
..., that releasably secures the adjacent panels together."*

15 The Office Action rejection ignores the limitation of claim 4 that
"...the pin receivers on adjacent safety panels cooperate to receive a pin,
..., that releasably secures the adjacent panels together." Thus, claim 4
cannot be prima facie obvious over Elias and Klarich, as they do not teach
or suggest all of the claimed limitations.

20 *(iii) The Present Rejection Ignores the Claim 5 Limitation Related to
"cooperating pin receivers" on Adjacent Panels*

The Office Action rejection ignores the limitation of claim 5 that
relates to the discussion immediately above relating to cooperating pin
receivers on adjacent panels. Thus, claim 5 cannot be prima facie obvious
25 over Elias and Klarich, as they do not teach or suggest all of the claimed
limitations.

b) Elias and Klarich Do Not Have Cooperating Pin Receivers

30 The Office Action asserts that Elias has "a pin receiver (26 –
straps)." Elias does not teach, or suggest, that the straps of one panel
cooperate with the straps of an adjacent panel to releasably secure the
adjacent panels together. The claims of the present invention (claims 4 and

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13 in particular) state that each panel has two sidewalls, and each sidewall has a pin receiver, wherein each pin receiver cooperates with a pin receiver on an adjacent panel to releasably secure the panels together. Such an arrangement of elements is not disclosed, taught, nor suggested by Elias.

Thus, since the first Office Action introduced no prior art related to the claimed subject matter of claim 4, and the related claims, Applicant amended claim 1 to include the language of claim 4.

The second Office Action then cited 5 new pieces of prior art (namely USPN's 4126116, 2173024, 6220240, 826124, 5542408) under the grounds of being necessitated by Applicant's amendment, which again merely pulled up an original dependent claim into an independent claim. Under MPEP 706.07(a), a second action on the merits may be final "except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment or the claims nor based on information submitted in and information disclosure statement ..." Further, the second (final) Office Action did not include a rebuttal of the arguments raised in Applicant's response to the first Office Action related to the content of numerous claims, including claim 4, but rather simply cited new prior art. Thus, the finality of the second Office Action was premature and is reviewable by petition under 37 CFR 1.181.

Similarly, with respect to claims 11, 12, 20, and 21 Applicant argued in the January 26, 2006 response:

H. Claim Rejections Under 35 U.S.C. § 103(a) Over Elias (4,311,199) in view of Klarich et al. (US 2003/0230298) and in Further View of Gaskins (4,338,912)

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The Office Action rejects claims 11-12 and 20-21 under 35 U.S.C. § 103(a) as being unpatentable over Elias ('199) in view of Klarich ('298), and in further view of Gaskins ('912). Applicant respectfully traverses all rejections, and believes this rejection to be moot in light of the arguments above.

I. The Office Action Fails to Establish a Prima Facie Case of Obviousness

a) There is No Basis in the Art for the Combination of Elias, Klarich, and Gaskins

See section A.I.(a) above for arguments related to the combination of Elias and Klarich. As for Gaskins, Gaskins is a cooking grille that has nothing to do with preventing unintentional contact with a campfire. Thus, without a basis for the combination of Elias, Klarich, and Gaskins the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

b) The Rejection Does Not Appear Directed to the Present Invention

The last paragraph of this rejection appears to argue that Gaskins would be obvious in light of Elias and Klarich. There is no discussion as to why the present invention would be obvious. Therefore, the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

c) The Office Action Fails to Consider All the Claim Limitations
(i) The Present Rejection Ignores a Limitation of Claims 11 and 20

The Office Action rejection explicitly identifies the lack of disclosure in Elias, Klarich, and Gaskins with respect to the attachment of the auxiliary supports to the campfire fire ring, yet simply moves on with the rejection. As previously stated, the present rejection does not address the present invention. Thus, claims 11 and 20 cannot be prima facie obvious over Elias, Klarich, and Gaskins as they do not teach or suggest all of the claimed limitations.

(ii) The Present Rejection Ignores a Limitation of Claims 12 and 21

The Office Action rejection explicitly identifies the lack of disclosure in Elias, Klarich, and Gaskins with respect to the telescoping rod of claims 12 and 21, yet simply moves on with the rejection. As previously stated, the present rejection does not address the present invention. Thus, claims 11 and 20 cannot be prima facie obvious over Elias, Klarich, and Gaskins as they do not teach or suggest all of the claimed limitations.

II. The Office Action Fails to Identify the Teaching, or Suggestion, of Numerous Limitations

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a) Elias, Klarich, and Gaskins Do Not Teach or Suggest a Support that Attaches to a Fixed Outdoor Structure to Keep the Invention in Place

5 The support braces (62, 72) of Gaskins do not secure the apparatus to any fixed outdoor structure to prevent movement of the device. In fact, the support braces are intended to be moved to "position the fire grate inwardly or outwardly with respect to the food on the grate to adjust the cooking rate." Thus, Elias, Klarich, and Gaskins do not teach, or suggest, an auxiliary support that secures the device to a campfire fire ring to add stability to the device.

b) Elias, Klarich, and Gaskins Do Not Teach or Suggest a Telescoping Support that Attaches to a Fixed Outdoor Structure to Keep the Invention in Place

10 The support braces (62, 72) of Gaskins are not only (a) not telescoping, but (b) they do not even adjust in length, nor teach, or suggest, such adjustability. Thus, Elias, Klarich, and Gaskins do not teach, or suggest, length-adjustable auxiliary supports, let alone telescoping auxiliary supports, that secure the device to a campfire fire ring to add stability to the device.

15 The final Office Action then modifies the rejection of claims 11 and 20 to be based upon "Elias in view of McCallum and in further view of Soseman (U.S. 826,124)" Both McCallum and Soseman are new newly cited prior art, appearing for the first time in the final Office Action. Claims 11 and 20 have never been amended. Thus, the finality of the second Office Action was premature and is reviewable by petition under 37 CFR 1.181.

20 The teleconference with the Examiners has led Applicant's attorney to believe that such a petition is not necessitated at this time in light of the indication of willingness to review the arguments contained herein. Applicant appreciates the Examiners participation in the Interview and their position, which has advanced prosecution of this application.

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B. Objection of Claim 4 under 37 CFR 1.75(c)

The second Office Action objects to claim 4 because it does not further limit the subject
5 matter of the previously amended claim 1. Applicant currently cancels claim 4.

C. Claim Rejections under 35 USC 103

In light of the Examiner Interview, Applicant limits the present arguments to the content
of claims 11, 12, 20, and 21. However, Applicant respectfully traverses all rejections and
10 reserves the right to present further arguments in a subsequent application or appeal.

**1. Rejection of Claims 11 and 20 under 35 USC 103(a) over Elias in view of
McCallum and in further view of Soseman**

As previously mentioned, the McCallum and Soseman references are newly cited prior
art.

15 **(a) The Office Action Fails to Establish a Prima Facie Case of Obviousness**

**i) There is No Basis in the Art for the Combination of Elias, McCallum, and
Soseman**

Elias is directed to a multi-section rigid stamped firewall system constructed
to numerous rigid panels designed for quick installation as a fire break to stop the
20 spread of a forest or field fire. Alternatively, McCallum is directed to a portable
barbecue device. Lastly, Soseman is directed to a means for splicing a telephone
pole. The references have nothing to do with preventing unintentional contact

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with a campfire. Thus, there is no basis for combining Soseman with McCallum or Elias. Therefore, without a basis for the combination of Elias, McCallum, and Soseman, the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

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(b) The Office Action Fails to Identify the Teaching, or Suggestion, of Numerous Limitations

i) Elias, McCallum, and Soseman Do Not Teach or Suggest a Support that Attaches to a Fixed Outdoor Structure to Keep the Invention in Place

10

As previously stated, Soseman cannot be combined to form a rejection of the present application. Additionally, the Soseman device does not secure a portion of the invention to a campfire fire ring. Thus, Elias, McCallum, and Soseman do not teach, or suggest, an auxiliary support that secures the device to a campfire fire ring to add stability to the device.

15

2. Rejection of Claims 12 and 21 under 35 USC 103(a) over Elias in view of McCallum and Soseman in further view of Kasik

The McCallum, Soseman, and Kasik references are newly cited prior art.

(a) The Office Action Fails to Establish a Prima Facie Case of Obviousness

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i) There is No Basis in the Art for the Combination of Elias, McCallum, Soseman, and Kasik

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Elias is directed to a multi-section rigid stamped firewall system constructed to numerous rigid panels designed for quick installation as a fire break to stop the spread of a forest or field fire. Alternatively, McCallum is directed to a portable barbecue device. Soseman is directed to a means for splicing a telephone pole. Lastly, Kasik is directed to barbecue grille shield. The references have nothing to do with preventing unintentional contact with a campfire. Thus, there is no basis for combining Soseman with McCallum or Elias or Kasik. Therefore, without a basis for the combination of Elias, McCallum, Soseman, and Kasik, the Office Action has failed to establish a prima facie case of obviousness, leaving the obviousness rejection improper.

ii) The Office Action Fails to Consider All the Claim Limitations

The Office Action rejection explicitly identifies the lack of disclosure in Elias, McCallum, and Soseman with respect to the telescoping rod of claims 12 and 21. Then the Office Action briefly mentions the "couplers" of Kasik to complete the rejection. Kasik contains no disclosure of the "couplers" being rigidly adjustable in length, let alone telescoping. Thus, claims 12 and 21 cannot be prima facie obvious over Elias, McCallum, Soseman, and Kasik as they do not teach or suggest all of the claimed limitations.

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(b) The Office Action Fails to Identify the Teaching, or Suggestion, of

Numerous Limitations

***i) Elias, McCallum, Soseman, and Kasik Do Not Teach or Suggest a
Telescoping Support that Attaches to a Fixed Outdoor Structure to Keep the
Invention in Place***

The couplers of Kasik are not only (a) not telescoping, but (b) they are not rigid devices that adjust in length. Further, Kasik does not teach, or suggest, such adjustability. Thus, Elias, McCallum, Soseman, and Kasik do not teach, or suggest, length-adjustable auxiliary supports, let alone telescoping auxiliary supports, that secure the device to a campfire fire ring to add stability to the device.

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Conclusion

In view of the above, it is submitted that the claims are in condition for allowance.

Allowance of all pending claims at an early date and issuance is solicited. If any question should
5 arise with respect to the above remarks, or if it would in any way expedite the prosecution of this
case, Applicant's attorney would appreciate a telephone call at (937) 554-8294.

Respectfully submitted,



David J. Dawsey

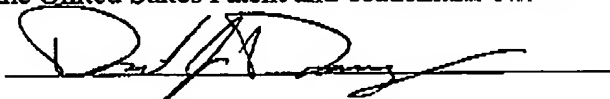
5/9/2006

10 Date

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20 **CERTIFICATE OF FAX TRANSMISSION UNDER 37 CFR 1.8**

I, undersigned, have transmitted the accompanying response by FAX to 571-273-8300 on
May 9, 2006 at 1:10 pm to the United States Patent and Trademark Office.



David J. Dawsey